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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45294
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2015-13950
v.)	
)	
DWIGHT GLENN PETERS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Dwight Glenn Peters pleaded guilty to aggravated driving under the influence (DUI). The district court imposed a unified sentence of fifteen years, with four years fixed, and retained jurisdiction. After Mr. Peters participated in a “rider,” the district court relinquished jurisdiction. Mr. Peters filed an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence, which the district court denied.

On appeal, Mr. Peters asserts the district court abused its discretion when it relinquished jurisdiction, and when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

Around 8:30 PM, Boise Police Department officers responded to an accident at an intersection involving a Tesla car. (*See* Presentence Report (*hereinafter*, PSI), pp.116-17.)¹ At the scene, officers learned the driver of the Tesla, Mr. Peters, and the back seat passenger, Shelley Graham, had already been taken to a hospital emergency room for injuries sustained in the accident. (PSI, pp.116-17.) The front seat passenger, Mr. Hershey, was not injured in the accident. (PSI, p.117.) Mr. Hershey told an officer he got in the car in the adjacent supermarket's parking lot. (PSI, p.117.) Mr. Hershey reported he asked Mr. Peters about the Tesla's "insane" mode, and the car left the stop sign at the intersection going fast across the street. (PSI, p.117.)

At the hospital, Mr. Peters told the officer that as far as he could remember, he and Ms. Shelley went to a bar/restaurant to eat dinner, where he had two glasses of wine. (*See* PSI, p.117.) They then went to the supermarket to get a movie. (PSI, p.117.) While Ms. Shelley was in the supermarket, Mr. Hershey began to talk to Mr. Peters about the Tesla, which was Mr. Hershey's "dream" car. (PSI, p.117.) Mr. Peters offered Mr. Hershey a ride in the car, and Mr. Hershey got into the front passenger seat. (PSI, p.117.) Ms. Graham later got into the back passenger seat. (PSI, p.117.) Mr. Peters remembered being at the stop sign at the intersection, and nothing else. (PSI, p.117.)

Mr. Peters had a small scratch on his right hand and a large cut to the back of his head. (PSI, p.117.) The officer noted the defendant's eyes were red and glassy, and his speech was somewhat thick tongued. (PSI, p.117.) Mr. Peters consented to a blood draw, with results of 0.260. (PSI, p.117.)

The officer then spoke with Ms. Graham, who offered many of the same details, but stated Mr. Peters drank “a lot” at the bar/restaurant. (PSI, p.117.) She clarified that she had one or two glasses from a pitcher of beer, and Mr. Peters drank the rest. (PSI, p.117.) She stated Mr. Peters only had beer. (PSI, p.117.) Another officer interviewed Ms. Graham the day after the accident, and she reported Mr. Peters had a red wine and ginger ale mixed drink before they went to dinner. (*See* PSI, p.117.) She stated that at dinner, she drank one eight-ounce glass of beer from the pitcher of dark beer Mr. Peters purchased, and Mr. Peters drank the rest of the pitcher. (PSI, p.117.) Ms. Graham reported that she saw Mr. Peters stagger while they were walking after dinner, but he indicated he was good to drive. (*See* PSI, p.117.) She went into the supermarket because after they were unable to get the movie they wanted from the outside kiosk, she tried the kiosk inside. (*See* PSI, pp.117-18.)

Ms. Graham stated that when she returned to the car, Mr. Hershey was already in the front passenger seat. (PSI, p.118.) Mr. Peters offered to take Mr. Hershey on a ride around the parking lot, so Ms. Graham reported she did not fasten her seatbelt. (PSI, p.118.) She stated that after they circled the lot, Mr. Hershey asked about the Tesla’s “insane” mode and whether it was true it could accelerate from 0 to 60 mph in three seconds, as advertised. (*See* PSI, p.118.) Mr. Peters replied, “Yes, it does,” and then put the car in “insane” mode and “floored” the acceleration pedal. (PSI, p.118.) Ms. Graham stated everything afterwards happened fast: they accelerated across the street and almost immediately struck a fixed object. (PSI, p.118.) She stated she awoke to find herself laying over the center console and felt blood dripping from her forehead. (PSI, p.118.) Ms. Graham recalled being extricated by medics and had partial

¹ All citations to the PSI refer to the 820-page PDF version of the Presentence Report and attachments.

memories of being taken to the hospital. (PSI, p.118.) She advised she received a fractured jaw, broken nose, broken eye socket, and broken left wrist in the crash. (PSI, p.118.)

The State charged Mr. Peters by Information with one count of aggravated driving under the influence of alcohol, felony, I.C. § 18-8006. (R., pp.47-48.) Mr. Peters entered a not guilty plea. (*See* R., p.52.)

Pursuant to a plea agreement, Mr. Peters later agreed to plead guilty to aggravated DUI. (R., pp.59-67; Tr., p.5, Ls.10-16.) The State agreed to recommend the district court impose a unified sentence of fifteen years, with three and one-half years fixed, and the defense would be free to ask for less. (Tr., p.5, Ls.16-19.) The district court accepted Mr. Peters' guilty plea. (Tr., p.19, Ls.13-20.)

The presentence report stated, “[b]ased on the level of assessed need and risk, and other protective factors as discussed above, Mr. Peters appears to be a good candidate for an order of retained jurisdiction, where he can participate in treatment while working with staff to develop a viable release plan.” (PSI, p.132.) During the sentencing hearing, the State recommended the district court impose a unified sentence of fifteen years, with three and one-half years fixed. (*See* Tr., p.26, Ls.20-24.) Mr. Peters recommended the district court retain jurisdiction so he could go on a “rider.” (*See* Tr., p.30, L.4 – p.32, L.7.) Ms. Graham spoke at the hearing and informed the district court Mr. Peters had been going to her doctor's appointments with her and making sure her bills were paid. (*See* Tr., p.23, Ls.15-19.)

The district court imposed a unified sentence of fifteen years, with four years fixed, and retained jurisdiction. (R., pp.71-75.) The district court indicated that, even if Mr. Peters did well on the rider and the court granted him probation, the court would possibly order he serve additional jail time for the sentencing purpose of retribution. (*See* Tr., p.38, Ls.3-12.)

After Mr. Peters participated in a rider at the North Idaho Correctional Institution (NICI), the rider program staff recommended the district court consider probation. (*See* PSI, pp.805-11, 819-20; Tr., p.40, Ls.12-22.) At the rider review hearing, the State recommended the district court relinquish jurisdiction. (Tr., p.41, Ls.11-14.) The State argued executing the sentence was still appropriate. (*See* Tr., p.41, Ls.14-19.) The State also alleged Mr. Peters had presented forged documents to the district court as part of the presentence packet. (Tr., p.41, L.20 – p.42, L.7.) Mr. Peters’ counsel told the district court he did not know anything about those allegations. (Tr., p.43, Ls.5-9.) Counsel recommended the district court place Mr. Peters on probation. (Tr., p.44, Ls.13-16.)

The district court set the matter over for a status conference. (Tr., p.45, Ls.7-14.) At the status conference, Mr. Peters’ counsel informed the district court that Mr. Peters would plead guilty to a misdemeanor charge related to the forged documents allegations. (*See* Tr., p.46, Ls.10-14.) The district court extended the period of retained jurisdiction in this case and scheduled another rider review hearing. (R., pp.95-96; *see* Tr., p.47, Ls.3-23.)

At the second rider review hearing, the parties advised the district court Mr. Peters had pleaded guilty to a reduced charge of misdemeanor disturbing the peace, by submitting forged documents.² (*See* Tr., p.48, L.24 – p.49, L.12.) In response to the district court’s inquiry, the State reported the purported writer of one of the letters of support submitted by Mr. Peters denied knowing anything about the letter; the date on another letter had been changed; and the purported writers of other letters denied writing the letters but adopted them. (*See* Tr., p.49, L.23 – p.51, L.3.) The State also informed the district court Ms. Graham no longer felt supportive of

² For more information on the misdemeanor, see generally Ada County No. CR01-17-07466.

Mr. Peters, and that she and her daughter were afraid of him. (*See Tr.*, p.49, Ls.14-22, p.51, L.24 – p.52, L.6.)

Mr. Peters' counsel told the district court some of the people involved agreed they authored letters but did not know to what purpose the letters would be put. (*See Tr.*, p.52, Ls.19-23.) For example, a pastor wrote two letters in support of Mr. Peters a couple years prior, while Mr. Peters was in prison on another conviction. (*See Tr.*, p.52, L.23 – p.53, L.6.) One of those letters was in the presentence packet in this case, but the pastor did not specifically authorize its inclusion. (*Tr.*, p.53, Ls.6-10.) A different individual denied writing another letter in support, but admitted the name on the letter was a pseudonym she had used when she met Mr. Peters on an Internet dating site. (*See Tr.*, p.53, Ls.11-18.) Ms. Graham admitted to writing a letter, but alleged the date had been changed. (*See Tr.*, p.53, L.19 – p.54, L.2.)

Additionally, Mr. Peters' counsel told the district court Mr. Peters before his sentencing had signed a power of attorney over to Ms. Graham and her daughter, and had entrusted his belongings to them, but now he had no idea where his things were. (*See Tr.*, p.56, Ls.1-7.) He asked the district court to consider lifting the no contact order in place against Mr. Peters regarding Ms. Graham and her daughter, for the purpose of allowing Mr. Peters to communicate with them about that issue. (*Tr.*, p.56, Ls.7-12; *see R.*, pp.83-85.)

The State recommended the district court execute the sentence. (*See Tr.*, p.51, L.4 – p.52, L.14.) Mr. Peters recommended the district court consider placing him on probation, with some additional jail time as a penalty if the court thought it appropriate. (*See Tr.*, p.57, L.16 – p.58, L.18.) The district court relinquished jurisdiction and executed Mr. Peters' unified sentence of fifteen years, with four years fixed. (*R.*, pp.99-101.) The district court also left the no contact order in place. (*See Tr.*, p.62, Ls.23-25.)

Mr. Peters filed a Notice of Appeal timely from the district court's Order Relinquishing Jurisdiction and Commitment. (R., pp.102-05.)

Mr. Peters also filed, pursuant to Idaho Criminal Rule 35, a Motion and Memorandum in Support of Reduction of Sentence. (Motion and Memorandum in Support of Reduction of Sentence, Oct. 18, 2017 (*hereinafter*, Rule 35 Motion).) Mr. Peters requested the district court reduce his sentence to a unified term of fifteen years, with one year fixed. (Rule 35 Motion, p.1.) Included with the Rule 35 motion were a letter to the district court from Mr. Peters, and three letters of support. (*See* Rule 35 Motion, p.3.) The district court denied the Rule 35 motion. (Order on Defendant's Rule 35 Motion, Oct. 27, 2017.)³

ISSUES

- I. Did the district court abuse its discretion when it relinquished jurisdiction?
- II. Did the district court abuse its discretion when it denied Mr. Peters' Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Peters asserts the district court abused its discretion when it relinquished jurisdiction in his case. An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion

³ The Motion and Memorandum in Support of Reduction of Sentence, and the Order on Defendant's Rule 35 Motion, are the subjects of a Motion to Augment filed contemporaneously with this brief.

in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

State v. Hedger, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

Mr. Peters submits the district court abused its discretion when it relinquished jurisdiction. Although Mr. Peters submitted misleading documents to the district court during the presentence investigation, afterwards he had a very good rider. The Addendum to the Presentence Investigation (*hereinafter*, APSI), reported that, while on the rider, “Mr. Peters has made some very positive changes in his thinking patterns, attitudes, and beliefs.” (PSI, p.820.) Mr. Peters completed the Cognitive-Behavioral Interventions for Substance Abuse (CBI-SA) and Pre-release programs. (PSI, pp.806-08, 820.) In the CBI-SA program, when Mr. Peters was unprepared to present his individualized success plan, he responded by preparing an updated plan that was very detailed and evinced a great deal of work and thought. (*See* PSI, pp.807-08.)

Further, “Mr. Peters had absolutely no disciplinary sanctions or incidents while at NICI, which is an absolute rarity and a demonstration that he can control his actions and behavior.” (PSI, p.820.) His “behavior and performance qualified him for reassignment to the Honor Unit,” where Mr. Peters remained at the time of the APSI. (PSI, p.820.) The APSI stated, “[b]ecause he was not considered a serious disciplinary problem while at NICI, he should be able to follow the rules of probation should he do so.” (PSI, p.820.)

The APSI reported, “[i]n addition to his program requirements, Mr. Peters also took full advantage of the other programs offered at NICI, which should enhance his ability to be

successful on probation and in the workforce.” (PSI, p.820.) Mr. Peters worked over 1400 hours in the laundry, which helped make him eligible for the Workforce certificate. (See PSI, p.820.) He also successfully completed Vocational Safety and Microsoft Digital Literacy courses. (PSI, p.820.) The APSI stated, “[t]his work experience and instruction should make Mr. Peters even more marketable than he already was, as he seeks employment in the community.” (PSI, p.820.) At the second rider review hearing, Mr. Peters’ counsel told the district court Mr. Peters was set up to live at the Boise Inn if he were placed on probation, and he would be able to get work through Labor Ready. (See Tr., p.56, L.21 – p.57, L.7.)

Further, the APSI stated, “Mr. Peters also appears to have recognized he needed assistance in other areas that could contribute to him being successful in his recovery and on probation.” (PSI, p.820.) He voluntarily participated in and successfully completed several mental health related groups. (PSI, p.820.) He also attended religious activities regularly, informally tutored other offenders, and voluntarily attended several educational electives. (See PSI, p.820.)

While it appears the district court focused on the forged or false letters when it decided to relinquish jurisdiction (*see* Tr., p.60, L.9 – p.62, L.5), Mr. Peters submits the district court should have instead concentrated on the strength of his performance while on the rider. Thus, Mr. Peters asserts the district court abused its discretion when it relinquished jurisdiction in his case.

II.

The District Court Abused Its Discretion When It Denied Mr. Peters’ Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Peters asserts that the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence. “A motion to alter an otherwise lawful

sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Mr. Peters asserts his sentence is excessive in view of the new and additional information presented with the Rule 35 motion. In his letter to the district court attached to the Rule 35 motion, Mr. Peters apologized for his actions and behavior on the day of the accident. (Letter from Dwight Peters to the Honorable Judge Hippler, Sept. 25, 2017, p.1.) He also stated, “[a]lthough Ms. Graham has made a full recovery of which I assisted her physically, emotionally, and financially through her recovery, I believe the only way I can [truly] make amends is to continue with my recovery and to pay it [forward].” (Letter from Dwight Peters, p.1.) Mr. Peters wrote, “I am so thankful for the programming I have received, that has given me new tools to cope with the daily stresses of life.” (Letter from Dwight Peters, p.2.) He told the district court, “[a]gain I am deeply ashamed of my behavior and realize there was consequences. I never want to return to my past and have a new resolve and determination to continue to move [forward] and help others.” (Letter from Dwight Peters, p.2.)

Steven Dhanjal, in a letter attached to the Rule 35 motion, wrote he had known Mr. Peters on a personal and business level for over eight years. (Letter from Steven Dhanjal,

Aug. 17, 2017.) Mr. Dhanjal stated Mr. Peters was “a person who was raised in a good family, and genuinely cared for others.” (Letter from Steven Dhanjal.) He also wrote Mr. Peters showed a bright, positive attitude, and offered him sound advice. (Letter from Steven Dhanjal.) Further, Mr. Dhanjal stated he knew Mr. Peters “made a bad decision by driving while intoxicated. But I also know his remorse, and furthermore his desire for recovery outweighs his bad decision that is now behind him.” (Letter from Steven Dhanjal.) Writing from his own experience of being sober for almost twenty-two years, Mr. Dhanjal reported Mr. Peters “is in it, to win it!!” (Letter from Steven Dhanjal.) Additionally, Mr. Dhanjal stated Mr. Peters “would never threaten someone, or try and intimidate them in a burst of anger, or an attempt to manipulate a situation.” (Letter from Steven Dhanjal.) Mr. Dhanjal wrote Mr. Peters “has shown tremendous growth, and understanding of his faults, and he truly wants to move forward as a sober, productive member of society.” (Letter from Steven Dhanjal.)

In his letter attached to the Rule 35 motion, Jack Morini wrote he had known Mr. Peters since 2009. (Letter from Jack Morini, undated.) Mr. Morini stated, “[t]hroughout that time he has always been an upstanding, trustworthy person. No matter how bad things have gotten (usually to his personal or financial detriment) he has stood by me and helped lift me up.” (Letter from Jack Morini.) Mr. Morini explained Mr. Peters had always held the same positive, unwavering kindness, even when their mutual business plans faltered. (*See* Letter from Jack Morini.) He also stated Mr. Peters “is the most trustworthy person I have ever met.” (Letter from Jack Morini.) Mr. Morini further wrote, “I have been lost without his guidance over the last several months and am truly devastated that this is where I find him.” (Letter from Jack Morini.) He stated, “I’m 100% confident that once he’s released he will use his experiences to give back to the community and help others.” (Letter from Jack Morini.)

Pastor Terrance Josephson wrote a letter of support addressed to the parole board. (Letter from Pastor Terrance Josephson to Idaho State Board of Parole, Aug. 3, 2017.) Pastor Josephson wrote the letter was also a letter of acceptance to their Victory in Christ Recovery Program, upon Mr. Peters' release. (*See* Letter from Pastor Terrance Josephson.) He stated he had met with Mr. Peters in person at the Ada County Jail, and Mr. Peters participated in their Victory in Christ Classes. (Letter from Pastor Terrance Josephson.) Pastor Josephson wrote, "I know he is on the right track in watching him in the classes and talking with him in person. Dwight wants to become the productive member of society and the family of God we all want him to be." (Letter from Pastor Terrance Josephson.) The letter concluded as follows: "Dwight and I ask that he be given the opportunity to show us all in the near future by giving him Parole and making the entrance and completion of the Victory Program a major part of that parole." (Letter from Pastor Terrance Josephson.)

Mr. Peters submits that his sentence is excessive in view of the above new and additional information presented with the Rule 35 motion. Thus, the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Mr. Peters respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 21st day of November, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

DWIGHT GLENN PETERS
INMATE #73179
SICI
PO BOX 8509
BOISE ID 83707

STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

JONATHAN LOSCHI
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas